K

1951. **File No.** O. Stamps/51

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Indian Stamp Act 1899

P-28 ©

File No. O. Stamps/51

Gen. 194

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C O N T E N T S.

Legal Department File.No. O. Stamps/51.

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KAH/20-6.
5 c.

Office of the R.L.A.

The view taken by the Revenue Department is correct.

A building being imbedded in the earth is immovable property and when the land is transferred building erected upon it passes by necessary implication. It is therefore desirable the building above should not be taken into consideration for the purposes of stamp duty.

Id/- P.M.L. 30/12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 80, dated the 2nd January 1951.

KAR/20-6.
4 c.

Office of the R.L.A.

Indian Stamp Act, 1899, sec.35. Whether sale of national savings certificates can be permitted if agents have only entered into agreements not duly stamped.

The question raised for the consideration of the R.L.A. is whether there is any legal objection to permitting the agents to effect sales of national savings certificates on the strength of the Kutch unstamped agreements and whether the monies handled by them can be deemed to be adequately secured.

2. Section 35 of the Indian Stamp Act, 1899, provides inter alia that no instrument chargeable with duty shall be acted upon by any public officer unless such instrument is duly stamped. The agreements in the form prescribed by Government Resolution, Finance Department, No.6571/33, dated 24th July 1950, are held liable with a stamp duty of Re.1-8-0. The agreements give authority to the agents who have entered into them to sell National Savings Certificates in specified localities and entitle them to some commission on such sales. But it seems however from section 35 that the Deputy National Savings Officer, who is presumably a public officer within the meaning of that expression in section 35, cannot proceed to entrust the sale of National Savings Certificates to, and to permit the handling of Government money by, persons who have entered into agreements in the standard form but which are not duly stamped. (Cf. the definition of "public servant" in sec. 21 I.P.C. and Law Lexicon p.1042). The proposal made by the Deputy National Savings Officer does not therefore appear to be legally feasible. The legal implications pointed out at 'A' on p.5 ante fail to take notice of the provision in section 35 that a document not duly stamped shall not be acted upon by any public officer.

Id/- P.M.L. 24/1
Remembrancer of Legal Affairs.

U.R. to F.D. No. 1551, dated the 24th January 1951.

KAN/20-6.
4 c.

Office of the R.L.A.

Seen and returned.

If only the work done in the Collector's office is proposed to be transferred to the Registration Branch without impairing the powers of the Collector under the Indian Stamp Act, no amendment of that Act would be necessary.

Id/- P.M.L. 8/1

Remembrancer of Legal Affairs.

U.R. to R.D. No. 541 , dated the 9th January 1951.

KAN/20-6.
4 c.

Copy of the opinion of Shri C.K. Daphtary.

.....

" The Schedule to the Agreement so far as I can see comprises only articles which are capable of passing by delivery. what is ——— hypothecated are the articles in the schedule— C/s clause 3 coupled with the recital. The —— earlier part of the recital speaks of "plant" — machinery etc and plant might have included — something not capable of passing by delivery. But what is hypothecated is specified in the — schedule and it is that which determines the matter.

In my opinion therefore the document in question is a hypothecation of moveables and not a mortgage."

Sd/- C.K. Daphtary.

August 8, 1950.

.....

MAN/20-6.
4 c.

No. 966
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 16th January '6

From

Shri P. M. Lad, I.C.S.,
Remembrancer of Legal Affairs,

To

The Superintendent of Stamps,
General Stamp Office,
Bombay & 1.

Subject:- Opinion regarding amount of stamp duty chargeable for a deed of Hypothecation.

Sir,

With reference to your letter No. 11908/3, dated the 27th October, 1959, I have the honour to enclose herewith my opinion on the subject noted above.

Yours faithfully,

Sd/- P.M.L. 15/1

Remembrancer of Legal Affairs.

RAN/20-6.
4 Q.

Office of the R.L.A.

Indian Stamp Act, 1899. Article 40(b).

It is difficult, if not impossible to say with precision what constitutes an annexation sufficient to convert a chattel attached to the earth into immoveable property. It is a question which must mainly depend upon the circumstances of each case principally on two circumstances viz. the degree of annexation and the object of annexation. This of necessity means going into evidence de horse the instrument which it is not permissible to do in an enquiry as to the chargeability of a document to stamp duty. (1943) 1 K.B.152 and (1914) 2 M.L.J. 60, therefore, do not require any consideration in this case.

2. Looking to the document it appears that the security comprises of "the plant, machinery, transmission lines, street lighting brackets, meters, instruments, office furniture, service lines, spares, and other articles which are capable of passing by delivery and short particulars whereof are given in the Schedule". The word "other" indicates that what precedes is of the same class as what follows and therefore the expression "which are capable of passing by delivery" must be read with all the previous items and not only with "articles and things". This construction is further supported by the fact that the expression which immediately follows, viz., "and short particulars whereof are given in the Schedule" goes with all the items and not only with "articles and things". The intention of the parties appears to be that only moveable property should be offered as security, otherwise the document would have been attested and registered. The view taken by the Advocate General appears to be correct.

Id/-
Remembrancer of Legal Affairs.

KAM/20-6.
4 6.

Office of the R.L.A.

There being a prior disposition in writing under the provisions of the Gandhi Smarak Nidhi trust, the proposed trust deed is not liable to duty under Article 68-A. The view taken by the Superintendent of Stamps is correct.

Id/- J.R.D. 24/3

Remembrancer of Legal Affairs.

U.R. to R.D.No. 4817 , dated the 27th March 1951.

KAH/21-6.
4 c.

The facts of the present reference are that sometime contractors execute agreements for execution of works and supply of materials with the local bodies without actually depositing cash money for the due performance of the contract but simply stipulating that they would pay a certain amount generally a percentage of the estimated amount of the work as deposit which would be refundable on the satisfactory completion of the work. The question referred to the R.L.A. for his opinion is whether such agreements would fall within Art.40(a) and would be liable to stamp as such in addition to Stamp duty under Art.5(6) already paid.

The view of the Supdt. of Stamps at p.69 ante is that the amount of deposit recoverable under rule 135 of the Local Boards Account Code if actually kept on or before the date of execution of agreement for the due performance of the Contract would be liable to stamp duty under Art.40(a) of the Indian Stamp Act. But mere stipulation to deposit at a future date or to deduct from the bills payable to the contractors for being held as deposit under rule 135 of the Local Boards Account Code would not amount to create a charge against the specified property liable to stamp duty under Ar.40(a) of the Act. The R.D. thinks that the view expressed by the Supdt. of Stamps appears to be correct; and the L.S.G. & P.H.D. has also concurred in this view. The deciding factor whether a particular agreement would fall under Art 40(a) of the Act is to see

if the cash deposit has been actually kept for the due performance of the contract on or before the date of the execution of the agreement. If it has been so done the document would fall under Act.40(a) and if it has not been so done and there is a mere stipulation to make cash deposit at some future date, such a document would not fall under Art. 40(a) of the Act.

Id/- R.T.K./15/3

KAN/21-6.
4 c.

Legal Department.

Seen and returned.

2. The view taken by the Superintendent of Stamps and concurred in by the Revenue Department and the Local Self Government & Public Health Department is correct.

Id/-

Additional Secretary to Government.

U.R. to R.D., No.4407, dated the 17th March 1951.

KAN/21-6.
4 c.

Office of the R.L.A.

In view of the R.L.A.'s opinion No. 80 dated 2nd January 1951 the distinction sought to be drawn by the Collector, B.S.D. amongst various Assignments does not survive. All assignments of leases whether with or without buildings will be exempted ~~xxx~~ from payment of stamp duty.

Id/- J.R.D. 27/3
Remembrancer of Legal Affairs.

U.R. to R.D. No.5021, dated the 29th March 1951.

KAB/21-6.
4 c.

Office of the R.L.A.

Section 19-A of the Indian Stamp Act, as inserted by Bombay Act II of 1932, makes excess stamp duty recoverable in respect of an instrument relating to any property situate in the State of Bombay or relating to any matter or thing done or to be done in the State of Bombay. In this case the property which is mortgaged is not situate in the State of Bombay. It is true that the particulars of the mortgage are to be reported to the Registrar of Companies for being registered under section 109 of the Indian Companies Act, 1913. But the sending of the instrument for the purpose of the registration of such particulars under the said section would not be a matter or thing done or to be done under the instrument. (Cf. Gilchrist v. Herbert 20 W.R. 348 quoted in Mulla's Stamp Act, p.45). The registration of such particulars is merely a notice and if it is not done, the transaction is void aggainst the liquidator or against other creditors in winding up proceedings. It does not invalidate the transaction in other respects (Jungbanzaya v. Chettyar I.L.R. 5xx Ran. 535; see also Wright v. Horton 12 App. Cas. 371). For these reasons section 19-A of the Indian Stamp Act, as amended by Bombay Act II of 1932, has no application and the instrument is no chargeable to excess stamp duty. The view taken by the Registrar of Companies is not correct.

Id/- J.R.D. 20/3

Remembrancer of Legal Affairs.

No. 4600
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1) 22nd March 1951.

To

The Registrar of Companies,
Raja Bahadur Mansion,
32, Apollo Street, Fort,
B O M B A Y .

Subject:- Machinery Manufacturers Corporation Ltd.,
Deed of Mortgage dated 20th Dec. 1950
executed at Calcutta - applicability of
section 19-A of the Indian Stamp Act.

Sir,

With reference to your letter No. 4952, dated the 14th February 1951, regarding the subject noted above, the opinion of the Remembrancer of Legal Affairs is sent herewithx along with the mortgage deed &t. 20-12-50.

Youre faithfully,

Id/- S.R.D. 20/3

Remembrancer of Legal Affairs.

KAN/21-3.
4 e.

Office of the R.L.A.

Stamp Act, Art. 53.

Having regard to the difficulties involved in obtaining receipts from the two Maharajahs, the Registrar of Companies may request the Solicitor to the Central Government at Bombay to enter satisfaction on the relevant orders with the consent of Messrs. Kanchershaw B. Chothia and Co. After this is done receipt of Messrs. Kanchershaw B. Chotia and Co. or the Saurashtra Government should be sufficient for audit purposes.

Id/- J.R.D. 18/5

Remembrancer of Legal Affairs.

U.R. to F.D. No. 7718, dated the 16th May 1951.

RAM/21-5.
4 c.

Legal Department.

Under Article 62(a) in the Schedule to the Indian Stamp Act, 1899, transfer (whether with or without consideration) of shares in an incorporated company is chargeable with one half of the duty payable in a conveyance for a consideration equalt to the value of the shares. It will, therefore, be clear that the fact that the transfer is without consideration is of no consequence in determining the stamp-duty payable in respect of the instrument of transfer.

2. The fact that the transfer is without consideration is material under Article 62(a) if it can be shown that the nominees are trustees for Government and transfer of shares by one nominee to another is transfer of trust property by one / trustee to another and thus chargeable with a fixed stamp duty of Rs.7/8/- or such smaller amount as may be chargeable under Article 62(a).

3. Since Government is not a party to the instrument it cannot fall under the exemption provided in proviso 1 to section 3 of the Indian Stamp Act, 1899. The fact that transfer is by one nominee of Government in favour another will not make any difference.

4. It is usual for companies to provide in the Articles of Association that nominated directors need not hold any qualification shares. D.D. may consider whether it would not be desirable to request all companies having Government Directors to amend their Articles accordingly.

Id/- R.D.H. 20/6.
Solicitor to Government.

U.O. to D.D. No.9867, dated the 21st June 1951.

KAN/21-6.
4 c.

Office of the R.L.A.

The Baroda Co-operative Land Mortgage Bank had issued two series of debentures to the extent of Rs. 8 lacs in 1934 and 1941. The Baroda Government by their resolution dated the 24th August 1937 had declared the Debentures exempt from Stamp Duty. The Registrar of Co-operative Societies has now proposed that a similar remission may be granted by the Government of Bombay under section 9 of the Indian Stamp Act, 1899, in respect of the transfers of the Debentures and receipts for interest on debentures. The Revenue Department has raised for the consideration of the R.L.A. the question whether in view of the constitutional changes such exemption can now be granted by the Central Government or the State Government.

2. Though the Government of Baroda had declared the debentures exempt from Stamp Duty, no notification to that effect was issued as required by section 9 of the Baroda Stamp Act. The question whether any such notification survives after the merger of the State does not therefore arise. As pointed out by the Revenue Department, sub-section (2) of section 9 of the Indian Stamp Act, 1899, as inserted by the Adaptation Order, defines the expression 'Government' for the purposes of that section to mean in relation inter alia to stamp duty in respect of debentures and receipts, the Central Government. In view of this it would appear that if any remission or exemption as proposed by the Registrar of Co-operative Societies is to be granted the Government of India will have to be approached. The view expressed by the Revenue Department in this respect appears to be correct.

Id/- J.R.D. 6/8

Remembrancer of Legal Affairs.

U.S. to R.D., No.12637, dated the 7th August 1951.

AAN/21-6.
4 c.

Office of the H.L.A.

In Civil Reference No.13 of 1947 the following questions were referred to the High Court under section 57 of the Indian Stamp Act:

(a) Whether the document, as originally executed, is only a deed of hypothecation as contended by the Maharashtra Sugar Mills, Ltd. or constitutes a mortgage with possession, chargeable with a stamp-duty of Rs.56,250/- under Article 40(a) of the Schedule to the Indian Stamp Act?

(b) What is the effect of the decreed rectification on the duty payable on the document of 22nd March 1945?

(c) Whether in any event the rectification can operate to avoid adjudication as to the stamp-duty made before the document was rectified?

The High Court answered the questions as under:

(a) Unnecessary.

(b) The effect of the decree of rectification is that the duty payable on the document is on the basis that the rectified document was the document originally executed and therefore the duty chargeable must be as if the document was a deed hypothecation.

(c) In the affirmative.

In the course of his judgment, His Lordship the Hon'ble the Chief Justice has observed as follows:-

"It is common ground between the parties that the document as originally executed was a mortgage with possession and chargeable to duty under Article 40(a) of the Schedule of the Indian Stamp Act. It is also common ground between the parties that the document as rectified by the Court is a deed of hypothecation and comes within the exemption given to that document under notification issued by Government.

The only question that we have to consider is, what is the effect of the decree of rectification on the duty payable on the document of 22nd March 1915 and that in terms is the second question submitted to us by the authority."

It is thus clear that in the Reference under consideration the Court did not consider whether the document as rectified was an unattested agreement for hypothecation or a mortgage of crops chargeable under Article 41 or a document chargeable under any other Article in the Schedule to the Stamp Act. It proceeded on the assumption that the rectified document was an unattested agreement for hypothecation and decided the effect of the decree for rectification.

Under these circumstances the Judgment does not conflict with the Government orders and existing practice. However if the Superintendent of Stamps has any doubts in the matter the item relating to Hypothecation in the Government Notification remitting the stamp-duty may be suitably modified so as to put the matter beyond any doubt.

Sd/- J.B.D. 20/8

Remembrancer of Legal Affairs.

KAH/21-8.
4 c.

No.13403
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 22nd August 1931.

To

The Superintendent of Stamps,
Bombay.

Subject: Stamp duty on mortgage of a standing crop.

Sir,

With reference to your letter No.1056/3 dated the 17th April 1931, I have the honour to forward herewith a copy of the opinion recorded by the Remembrancer of Legal Affairs.

Yours faithfully,

Id/- R.D.N. 22/8

for Remembrancer of Legal Affairs.

KAH/21-6.
4 c.

No. 13375

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 29th August '51

To

The Superintendent of Stamps,
Bombay.

Subject:- Stamp duty on Release deed.

Sir,

With reference to your letter No. 7825/S, dated the 25th July 1951, I have the honour to state as follows:-

From the document it appears that the Releasor and Releasee and one Rajabally Abdulhusseinj purchased the property at Khoja Street, Bombay as joint tenants and not as tenants- in - Common. The said Rajabally dies in 1947 and on his death the Releasor and Releasee held the said property as joint tenants with the right of survivorship. The Releasor releases her claim against the said property by the document in question. The operative part of document is an important part of the document for construing the grant. Here in this case the Releasor" acquits releases and discharges the Releasee and quit claims and Releases into the Releasees and Renounce her claim" in the property. These words are usually and invariably used in all deeds of Releases. Therefor the deed is not an instrument of partition within the meaning of section 2 clause 15 of the Stamp Act since it is not a deed by whic co-owners divide or agree to devide the property in severally. It is a deed by which one of the joint owners whose interests are not distinct renounces his claim against the property. If a joint owner merely abandons his interest it will be a release and not a partition. (9 Bom.417 and 13 Mad. 233). The document is therefore properly stamped.

Yours faithfully,
Remembrancer of Legal Affairs.

KAH/21-6.
4 c.

No.13876

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 29th August 1951.

To

The Superintendent of Stamps,
Bombay.

Sir,

With reference to your letter No.7076/3, dated the 2nd June 1951, I have the honour to state that in the present case the document is an agreement to lease creating the present demise. It is not a document which merely creates a right to obtain another document, nor is ~~it~~ it a document which provides that upon the happing of a contingent event at a date which may be indetermination or distant, a lease would be granted (I.L.R.47 Cal.465,. The view taken by you is therefore correct.

Yours faithfully,

Id/- J.R.D. 28/8

Remembrancer of Legal Affairs.

KAH/21-6.
4 c.

As regards instrument A which was executed in Baroda State prior to merger, the instrument will be chargeable to duty with which it would have been chargeable under the Baroda Stamp Act at the time of its execution and repeal of the Baroda Stamp Act will not affect the liability incurred by the executant in executing an under-stamped document. This Government as successor Government will, therefore, be entitled to recover the deficiency and penalty.

As regards instrument B which was executed in Ahmedabad it would appear that the instrument falls section 3(a) of the Indian Stamp Act. It is an instrument executed in India but relating to property situated or to any matter or thing done or to be done outside India. Such instruments are liable to payment of duty under section 3(a) (See p. 45 of Mulla's Stamp Act, 5th Edition). It is true that Baroda Government could not have collected the duty payable under the Indian Stamp Act but it is open to Government to claim it, not as successor to Baroda Government but in its own right. The Indian Stamp Act does not provide for exemption in respect of instruments executed in India relating to property or any matter or thing, done or to be done outside India, and the rule that foreign revenue laws are to be discarded has no application to the present case. Since the instrument when executed in India was chargeable to duty under the India Stamp Act, Government can still claim it, notwithstanding the fact that the executants would have escaped its payment because the instrument was to be used outside India.

It may perhaps be fair to charge only a nominal

penalty.....

penalty in such cases and where the instrument was chargeable under both the Indian Stamp Act and Baroda Stamp Act to charge the higher duty but give remission in respect of the duty paid under either Act. R.D. may consider the feasibility of issuing such orders or instructions.

Id/-

Additional Secretary to Government.

U.R. to R.J. No.16092, dated the 10th October 1951.

[illegible]
4 C.

No.20114
Legal Department,
Bombay Castle (Bombay No.1) 22nd December 1951.

To

The Superintendent of Stamps,
Bombay.

Re: Estate of Bhagvatacharya G.Narayancharya-V.
..... deceased.

Reference your letter No.12103/P dated the 4th December 1951.

Section 19-G of the Court Fees Act, 1870 provides that in case where too low a court fees has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased and if any executor or administrator acting under such probate or letters of administration does not within six months after the discovery of the mistake or of any effects not known at any time to have belonged to the deceased, apply to the Chief Controlling Revenue Authority and pay what is wanting to make up the Court-fee which ought to have been paid at first on such probate or letters of administration he shall forfeit the sum of Rs.1000/- and also a further sum at the rate of ten rupees per cent on the amount of the sum necessary to make up the proper court fee. Section 19-J(2) authorised the Chief Controlling Revenue Authority to remit the whole any part of such penalty or forfeiture in excess of the full court fee which ought to have been paid. Reading both the sections together it will appear that if the application is made after six months from the discovery, the consequences mentioned in section 19-G must follow and the applicant has no other relief but is entirely in the hands of the Chief Controlling Revenue Authority,

who may, but is not bound to, grant such relief as he may think proper under section 19-J(2).

3. Under these circumstances the correct procedure appears to be first to levy the fixed forfeiture and penalty leviable under section 19-G and then if a proper representation is made to subsequently remit the whole or part of any such forfeiture or penalty in appropriate cases. In these cases where the first application specifies the grounds of delay to the satisfaction of the Chief Controlling Authority the correct order would be to charge full forfeiture and penalty under section 19-G and then by the same order remit the whole or part of such forfeitures or penalty instead of imposing a nominal penalty straightway. There will be no material difference in the net amount to be charged but procedure suggested above will only indicate that the provisions of section 19-G have not been disregarded altogether.

4. As to what should be said to be too low a court fee referred to in section 19-E and 19-G, the decision must depend upon the facts of each case. The duty of determining whether or not too low a court fee has been paid and what is the penalty to be levied, is imposed by the Legislature on the Chief Controlling Revenue Authority. A Civil Court will have no jurisdiction to review the decision on the ground that the valuation has been incorrectly made or that the discretion in the imposition of penalty has been erroneously exercised, if the Authority concerned has followed the procedure prescribed by the Statute which is the source of its authority. (Vide Nemeckji V.Secy. of State (1896 Bom.P.J.731; Nikunja Bani Chardhurani Vs. Secy. of State, 143 Cal. 230). It may, therefore, be possible for the Authority to issue executive instructions and lay down the principles to be followed in deciding these cases.

Id/- J.N.D. 21/12

Remembrancer of Legal Affairs.

RAM/21-6.
4 c.